

Town of Amherst
Zoning Board of Appeals - Special Permit

DECISION

Applicant: Andrew Bellak c/o Stakeholder's Capital
321 Main Street
Amherst, MA 01002

Owner: Gordon Chen c/o Kamins Real Estate
55 South Pleasant Street
Amherst, MA 01002

Date application filed with the Town Clerk: November 3, 2009

Nature of request: Request for Special Permit to establish a professional office under Section 3.358.1 and Section 9.22 of the Zoning Bylaw

Address: 321 Main Street (Map 14B-28, R-G Zoning District)

Legal notice: Published on November 4 and November 11, 2009 in the Daily Hampshire Gazette and sent to abutters on November 3, 2009

Board members: Tom Simpson, Tom Ehrgood, Mark Parent

Submissions:

- Project Application Report, ZBA FY2010-00006, dated November 13, 2009;
- A Management Plan, for Stakeholders Capital, dated November 2009;
- A Management Plan form prepared by Kamins Real Estate, approved on July 25, 2005;
- A Site Plan and Floor Plan;
- ZBA FY2007-00011, for reference, submitted by staff;
- Article 12 Existing and Proposed zoning maps, submitted by staff.

Site Visit: November 16, 2009

Tom Simpson, Tom Ehrgood and Mark Parent met with the applicant, Andrew Bellak at the site. The Board members observed the following:

- The location of the existing commercial building on the corner of Main Street and Dickinson Streets;
- The location of the proposed office space, formerly occupied by the Claw Foot Tub, at the north east corner of the building and the interior of the proposed office space;
- The unmarked pavement in front of the space;
- Two vehicles travelling across the unmarked parking area from Main Street to Dickinson Street.

Public Hearing: November 19, 2009

The Board was informed that Town Counsel, in a telephone conversation with the Senior Planner and Building Commissioner on November 19, 2009, had given his legal opinion that the Board no longer has authority under the bylaw, as recently amended by Town Meeting, to act on the application for Special Permit. Town Counsel noted that the filing of an application prior to the date the date of Town Meeting's vote to adopt Article 12, which changed the zoning of the subject parcel, is not adequate to preserve the Zoning Board of Appeals' jurisdiction. Town Counsel explained that when Town Meeting voted to change the zoning of the parcel from General Residence to Neighborhood Business, the permit requirement for the professional office use changed from Special Permit to Site Plan Review. In order for the application to have been acted upon by the Zoning Board of Appeals, the Special Permit would have had to have been completed prior to the date of the first advertisement of the proposed zoning amendment.

The Board members and staff acknowledged the effort of the applicant and noted the unfortunate timing of the information. The Board concluded that the only option for the applicant is to request withdrawal of the application without prejudice.

Mr. Parent asked about the continued occupancy of the building given this new information. The Building Commissioner stated that if the petitioner is making a good faith effort to apply and obtain the necessary land use permit, no enforcement action would occur.

Mr. Simpson expressed caution and concern regarding the observed behavior of vehicles cutting across the parking area in front of the building to travel from Main Street to Dickinson Street. The Board noted that the entrance to the space is in very close proximity to where the vehicles were passing through and that he and, or, his clients could be at risk.

Zoning Board Decision

Mr. Parent MOVED to APPROVE the applicant's request for withdrawal of the application without prejudice. Mr. Ehrgood seconded the motion.

Mr. Parent MOVED to allow the applicant to receive a refund of the application fee. Mr. Ehrgood seconded the motion.

For all of the reasons stated above, the Board VOTED unanimously to APPROVE the request to WITHDRAW WITHOUT PREJUDICE the application for Special Permit, ZBA FY2010-00006, and to allow the applicant to receive a refund of the application fee.

 TOM SIMPSON

 TOM EHrgOOD

 MARK PARENT

FILED THIS _____ day of _____, 2009 at _____,
 in the office of the Amherst Town Clerk _____.
 TWENTY-DAY APPEAL period expires, _____ 2009.
 NOTICE OF DECISION mailed this _____ day of _____, 2009
 to the attached list of addresses by _____, for the Board.
 NOTICE OF PERMIT or Variance filed this _____ day of _____, 2009,
 in the Hampshire County Registry of Deeds.